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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Kiribati

1. Introduction: Overview of the legal and institutional framework of Kiribati in the context of implementation of the United Nations Convention against Corruption

The Republic of Kiribati acceded to the Convention on 27 September 2013 and it entered into force for Kiribati on the same date. Kiribati deposited its instrument of ratification with the Secretary-General of the United Nations on 27 September 2013.

Kiribati is a parliamentary democracy. Kiribati's legal system is comprised of Acts of Parliament, certain British statutes, common law and customary law. The Head of State and of Government is Te Beretitenti (President). The House of Assembly (Maneaba ni Maungatabu) is a unicameral House of Assembly.

The judicial branch of Kiribati is comprised of the Court of Appeal, High Court and magistrates' courts. Judges and magistrates at all levels are appointed by Te Beretitenti. Part IX of the Criminal Procedure Code provides for appeals by way of petition from the magistrates' courts to the High Court.

Relevant institutions in the fight against corruption include the Office of the President, the Attorney General, the Office of the Director of Public Prosecutions (DPP), the Commissioner of Police, the Financial Intelligence Unit, the Department of Prisons, the Auditor General, Ministry of Foreign Affairs and the Ministry of Finance and Economic Development. Meetings were also held with the Chamber of Commerce.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is criminalized in the Penal Code 1977 (hereinafter, PC), chapter 67, in particular sections 85-87 and 366-369. There have been no bribery cases in the last five years.

The bribery of foreign public officials and officials of public international organizations is not criminalized.

Kiribati relies on the general bribery provisions to pursue cases of trading in influence. The abuse of "supposed influence" is not specifically covered.

Bribery in the private sector is not criminalized.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized in sections 6, 12 and 13 of the Proceeds of Crime Act 2003 (POCA). There have been no prosecutions to date relating to money-laundering. Attempts and conspiracies, as well as incitement, to commit money-laundering are covered under the PC (sections 371-378). Kiribati adopts a "serious offences" threshold to defining predicate offences that covers offences punishable by imprisonment for 12 months or longer or a fine of over AU$ 500.

This would exclude some United Nations Convention against Corruption offences that are misdemeanours (e.g., under sections 90 and 367, PC). Self-laundering is not precluded (section 12(5), POCA).

Concealment is criminalized (sections 306-307, PC).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The general provision for theft is section 251, PC, and the penalty could constitute a felony (section 254). Frauds and breaches of trust by persons employed in the public service are covered (section 121), as well as larceny and embezzlement by clerks or servants (section 266) and conversion (sections 271, 297). Case law on embezzlement by clerks or servants contrary to section 266 was provided.

The same provisions also apply to embezzlement in the private sector.

Section 90, PC covers abuse of office and case law was provided.

Illicit enrichment is not criminalized.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized principally in sections 95, 108, 110, 115 and 120 PC. The provisions on interference with witnesses are limited to acts of deceit and conspiracy (sections 108 and 110, PC). Statistics on resisting arrest and obstructing police officers were provided. There are no reported cases of interference with witnesses.

Liability of legal persons (art. 26)

Kiribati recognizes the criminal liability of legal persons, and fines, in addition to or instead of punishment, may be imposed (sections 26 and 29, PC). There have been no investigations or prosecutions of legal persons.

Participation and attempt (art. 27)

Participation in offences is criminalized (section 21, PC on principal offenders, section 23 on counselling another to commit an offence, sections 376-378 on conspiracy, as well as sections 379-380 on accessories after the fact).

Sections 371-373 cover the attempt to commit offences, section 374 addresses soliciting and inciting others to commit offence in the Gilbert Islands or elsewhere and section 375 covers neglect to prevent felony. Preparation is not specifically addressed but in practice, the act of preparing for an offence would arguably fall under either conspiracy to commit an offence (section 376), counselling another to commit an offence (section 23) or attempt (sections 371-372).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The determination of sanctions generally takes into account the gravity of offences.

According to article 76 of the Constitution, the Parliament may determine the privileges and immunities of its members, who enjoy immunities from arrest and attendance in any civil cause or matter (section 7, Privileges, Immunities and

Powers of the Maneaba ni Maungatabu Act 1986). The immunity of members of Parliament has been lifted (Dr. Tetaua Taitai v. Speaker of Parliament). The President does not have immunity in criminal matters.

The Attorney General of Kiribati enjoys broad prosecutorial discretion. In practice, the discretionary legal powers are often used by the prosecutors, subject to article 42 of the Constitution, which addresses the powers and mandate of the Attorney General.

Sections 106-109 of the Criminal Procedure Code (chapter 17) address conditions on release pending trial or appeal. Parole is regulated principally under the Parole Board Act 1986, and no inmates charged with corruption-related offences have been released on parole in the past five years.

Relevant provisions with respect to the disciplinary measures against public officials accused or convicted of criminal misconduct are found in the National Conditions of Service (NCS). Accused persons have been suspended from public office pending criminal proceedings: Karianako Kamaua (civil case).

Kiribati has established a prisoner reintegration programme, which covers life skills and vocational training. There is a reported need for Kiribati to overhaul the Prisons Ordinance.

Common law principles provide for the courts and the prosecutors to exercise their discretion in considering mitigating punishment (i.e., guilty pleas, cooperation with the investigating authorities). Immunity from prosecution may only be granted by the DPP in the case of cooperating co-defendants, although the process is not regulated by law.

Protection of witnesses and reporting persons (arts. 32 and 33)

Kiribati has not adopted measures to provide protection from potential retaliation or intimidation for witnesses and experts who give testimony or provide evidence, or for their relatives and other persons close to them. In practice, protections could be granted by the police for prosecution witnesses, including the payment of per diems and physical protection.

Kiribati has not adopted measures to protect reporting persons and whistle-blowers in cases involving Convention against Corruption offences (art. 33).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Sections 6 and 21 POCA principally cover the confiscation of proceeds and instrumentalities of crime, subject to a "serious offences" threshold, in respect of persons convicted of the offence. Provisions on search and seizure are covered (i.e., sections 43-44, 50-51, 56, 58, 93-95, POCA). There have been no cases of confiscation in corruption related matters. Basic measures on the administration of frozen, seized and confiscated assets are in place, including through the appointment by the Attorney General of a person to administer property forfeited or subject to a restraining order (section 120, POCA). The Court has jurisdiction to grant access to bank, financial or commercial records based on the merit of the application.

There is one foreign bank operating in Kiribati, in which the Government holds a 25 per cent interest. Limited procedures are available under POCA that could be used for the lifting of bank secrecy.

Statute of limitations; criminal record (arts. 29 and 41)

There is no statute of limitations in respect of criminal matters. Under the Criminal Procedure Code, the limitation period applies only to offences which carry a maximum penalty of $100 or 3 months imprisonment (i.e., not Convention against Corruption offences). The Court also has discretion to dismiss cases for undue delay.

It is unclear on what basis courts may consider previous foreign convictions as there has been no experience in this.

Jurisdiction (art. 42)

Territorial jurisdiction is recognized in line with the Convention (arts. 5, 132, 53 PC). Kiribati assumes jurisdiction over offences on board vessels and aircraft as an extension of the territoriality principle, provided the conduct occurs within its territorial boundaries. Kiribati has not established the active or passive nationality principles.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Pursuant to common law principles, any contract could be deemed void or be annulled. Persons who have been convicted of criminal activity are precluded from participating in public contracts under the Procurement Act (section 6).

There is nothing preventing a person from undertaking civil proceedings in order to seek compensation for corruption.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The key authorities include the Attorney General's Office (Director of Public Prosecutions (DPP) and the Solicitor General's Office), Kiribati Police Anti-Corruption Unit and the Financial Intelligence Unit (FIU). The independence of the Attorney General's Office is outlined in article 42 of the Constitution. Although the DPP is not supposed to be subject to any external interference, it was reported that in practice this is not always the case. There are 2 prosecutors excluding the DPP. The Solicitor General's Office provides legal advice to the Government, including on corruption-related matters, and has eight staff members, excluding the Solicitor General. The powers and mandate of the FIU are outlined in section 17, POCA. The budgets of each department or entity are controlled by the Head thereof.

There are limited measures to encourage cooperation among national authorities and with the private sector. In particular, the Cabinet has approved the creation of an anti-corruption committee comprising the Office of the President, DPP, police, Customs and Immigration and the Auditor General, although this committee is not yet functional. Cooperation with the private sector is mainly exercised through the oversight function of the FIU and the outreach activities of the Parliament and the Chamber of Commerce. Few cases of implementation were available.

2.2. Successes and good practices

Overall, the following success and good practice in implementing chapter III of the Convention is highlighted:

- The absence of a statute of limitations in respect of criminal matters.

2.3. Challenges in implementation

- Criminalize bribery of foreign public officials and officials of public international organizations, and consider establishing the passive version of the offence.
- Consider adopting a specific offence of trading in influence that would cover the abuse of supposed influence.
- Consider establishing the offence of illicit enrichment.
- Consider criminalizing bribery in the private sector.
- Ensure that all Convention against Corruption offences qualify as predicate offences for purposes of money-laundering and furnish copies of legislation to the United Nations.
- Strengthen measures to criminalize the interference with witnesses who provide evidence or give testimony (art. 25(a)).
- Adopt measures to strengthen the independence of the DPP.
- The reviewers welcome efforts to overhaul the Prisons Ordinance, to modernize and streamline existing measures and strengthen the prisoner reintegration programme.
- Consider establishing relevant provisions requiring that an offender demonstrate the lawful origin of alleged criminal proceeds.
- Adopt measures to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them, establish evidentiary rules and consider entering into relocation agreements (art. 32). Also ensure the protection of victims in line with article 32(4) and (5).
- Consider adopting measures to protect reporting persons and whistle-blowers in cases involving offences under this Convention (art. 33).
- Strengthen independence of relevant law enforcement agencies, in particular the FIU, as well as available resources of the agencies, in particular the Attorney General's Office.
- There is a need for capacity-building to strengthen investigative skills of relevant law enforcement agencies, in particular the police, including asset tracing and seizure.
- Establish provisions to protect cooperating offenders (art. 37(4)).
- Increase awareness-raising on corruption in the communities.

- Strengthen procedures for lifting bank secrecy, including through the adoption of legislative measures.
- Clarify the extraterritorial jurisdiction on board vessels and aircraft where the conduct occurs outside its territorial boundaries and consider establishing the active and passive nationality principles (art. 42(2)(a) and (b)).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Legislative drafting/legal advice with regard to articles 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 33 and 42.
- Good practices/lessons learned with regard to articles 20, 21, 22, 23, 30, 31, 32, 33, 35, 36, 37, 38, 39 and 42.
- Capacity-building assistance to national authorities with regard to articles 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 35, 36 and 37.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Extradition is governed by the Extradition Act, which applies to Commonwealth countries, Pacific Island countries and comity countries. A "backing of warrants" procedure is in place for Pacific Island countries (section 26). Kiribati does not make extradition conditional on the existence of a treaty. However, it can apply bilateral and multilateral treaties like the Convention against Corruption. Kiribati also subscribes to the Commonwealth (London) Scheme on Extradition. Extradition matters in Kiribati are under the responsibility of the Minister for Foreign Affairs.

Extradition is subject to dual criminality and is limited to the extent that not all offences under the Convention have been criminalized.

The minimum term of imprisonment or other deprivation of liberty of one year for an offence to be extraditable covers most but not all Convention offences.

Kiribati could consider the Convention as the legal basis for extradition, although there has been no experience in its application.

In the last five years, no extradition requests have been received. One request was sent to Fiji (murder-related), and two people were then extradited to Kiribati.

Political offences are exempted from extradition under the Extradition Act (section 6). The nationality of the requested person is a permissive ground for refusal (section 19(2)(b), Extradition Act). The *aut dedere aut judicare* obligation is addressed.

The issues of fair treatment or discriminatory purpose have not been invoked to date.

A duty to consult with requesting States before refusing extradition is not specified in the Extradition Act but followed in practice.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

As a member of the Commonwealth, Kiribati could, in principle, rely on the Scheme for the Transfer of Convicted Offenders within the Commonwealth, but this has not been used to date. There have been no case examples of prisoner transfer.

There is no law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

The Mutual Assistance in Criminal Matters Act (MACMA) provides the legal basis for mutual legal assistance (MLA). Kiribati does not make MLA conditional on the existence of a treaty. As a member of the Commonwealth, Kiribati could, in principle, rely on the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth, although there has been no experience in its application. The Central Authority for MLA in Kiribati is the Attorney General. However, requests would normally be received and sent through diplomatic channels. The Central Authority would then analyse and transmit an incoming request to competent domestic authorities for execution.

The absence of dual criminality is a permissive ground for refusal (section 12, MACMA). Accordingly, dual criminality may be dispensed with at the discretion of the Attorney General, who would generally exercise this discretion to provide non-coercive assistance wherever possible. MLA is limited to the extent that not all offences established under the Convention have been criminalized.

In the last five years, no MLA requests have been received and none have been sent. However, Kiribati is currently in the process of drafting two MLA requests (corruption-related).

Kiribati recognizes grounds for refusal in line with the Convention, although assistance may also be refused on the ground that the assistance could prejudice a criminal investigation or proceeding in Kiribati (section 12(d), MACMA).

No specific time frames are specified in the MACMA, nor is there any specified procedure for periodic follow up.

Kiribati has relied on INTERPOL channels in a domestic investigation for administrative assistance. Bank secrecy is not a ground for refusal and banking records could be provided on request upon the issuance of a relevant court order. A limitation on use of information received through MLA is provided for.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The law enforcement authorities of Kiribati cooperate through regional and international networks and in specific matters on a case-by-case basis. The existence of a treaty or formal memorandum of understanding (MoU) is not a prerequisite.

In principle, Kiribati could consider the Convention against Corruption as the basis for law enforcement cooperation, although there has been no experience in its application.

The Transnational Crime Unit (TCU) under the Kiribati Police cooperates internationally, not only through the Pacific Transnational Crime Network (PTCN),

but also through other counterparts (including INTERPOL and the Australian Federal Police (AFP)). Since its establishment, there have been secondments of members of the TCU in Kiribati to the Pacific Transnational Crime Coordination Centre in Apia.

Kiribati is also party to numerous regional initiatives (i.e., the Pacific Islands Chiefs of Police, Pacific Islands Forum Secretariat, Oceania Customs Organisation, Pacific Patrol Boat Program, the Pacific Islands Law Officer's Network).

The FIU has informal connections with other financial intelligence units (including Fiji FIU) and is involved with the Pacific Association of FIUs (an official memorandum of understanding is yet to be signed).

Kiribati could participate in joint investigations on a case-by-case basis based on informal arrangements. One example was cited from the 1960s (not related to corruption).

The use of special investigative techniques is not addressed in the domestic legislation and has not been tested.

3.2. Successes and good practices

Overall, the following success and good practice in implementing chapter IV of the Convention is highlighted:

- Kiribati's international law enforcement cooperation, particularly in the region.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Amend section 5(1)(b) of the Extradition Act to read, "the conduct that constitutes the offence, if committed in Kiribati, would constitute an offence (however described) in Kiribati for which the minimum penalty is imprisonment, or other deprivation of liberty, for a period of 1 year or more".
- Kiribati may wish to consider granting extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.
- Consider granting extradition requests that include several separate offences, one of which is extraditable.
- Review the Extradition Act to ensure all offences under the Convention are extraditable.
- Consider simplifying and streamlining procedures and evidentiary requirements (such as internal guidelines and/or a request management system) in order to allow for extradition and MLA requests to be dealt with efficiently and effectively.
- Kiribati may wish to consider entering into bilateral or multilateral agreements or arrangements on the transfer of convicted persons for Convention-related offences.

- Take legislative measures to ensure that MLA is not refused on the sole ground of bank secrecy and may not be declined on the sole ground that the offence is also considered to involve fiscal matters.
- Address the conditions of a prisoner being transferred, as outlined in paragraph 11 of article 46, in its domestic law.
- Consider amending MACMA to provide that assistance may be postponed, rather than refused, on the ground that the assistance could prejudice a criminal investigation or proceeding in Kiribati (section 12(d), MACMA).
- Consider the possibility of transferring criminal proceedings to and from a foreign State if it were in the interests of the proper administration of justice, in particular where several jurisdictions are involved.
- Consider introducing special investigative techniques, as may be necessary and within existing resources, providing the corresponding training to law enforcement personnel and ensuring that evidence derived from such techniques is admissible in court.

3.4. Technical assistance needs identified to improve implementation of the Convention

- Kiribati indicated that it would require technical assistance, including good practice examples and capacity-building, on extradition and MLA (including a manual/guidelines for staff and an internal database for tracking incoming and outgoing requests), the transfer of prisoners and criminal proceedings, joint investigations, special investigative techniques and to enhance law enforcement cooperation.